

DON G. GILBERTSON

IBLA 81-1062

Decided October 26, 1981

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring mining claims abandoned and void. AA-34677 through AA-34693.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Don G. Gilbertson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don G. Gilbertson has appealed from the August 9, 1981, decision of the Alaska State Office, Bureau of Land Management (BLM), which declared 17 mining claims AA-34677 through AA-34693 abandoned and void for failure to file, on or before December 30, 1980, evidence

of assessment work or notice of intention to hold the unpatented mining claim, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and the implementing regulations in 43 CFR 3833.2-1(a).

In his statement of reasons for appeal, appellant states that he and Mark Goodman had completed assessment work on the claims by August of 1980 and that Mark Goodman (whom he had entrusted with filing the assessment work) was seriously injured in an accident prior to filing. Appellant states that Goodman had a friend write appellant a letter in mid-September informing him of the accident and loss of the papers, which appellant did not receive until February 10, 1981. Appellant states that upon receipt of the letter he immediately called the State recording office, explained the problem, and that they agreed to accept late filing and advise the BLM.

[1, 2] The above-cited statute and regulation impose a conclusive presumption of mining claim abandonment for any failure to file the required instruments in the proper BLM office by the date on which they are due. This Board is without authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); see also David R. Newman, 57 IBLA 23 (1981).

While circumstances relating to appellant's untimely filing are unfortunate, the statutes allow no discretion. Appellant should confer with BLM about the possibility of relocating his claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

APPENDIX

<u>BLM Serial No.</u>	<u>Claim Name</u>	<u>Location Date</u>
AA-34677	Discovery	October 10, 1969
AA-34678	Gills Gulch	October 10, 1969
AA-34679	Roberts Pups	October 10, 1969
AA-34680	Daniel Drift	October 10, 1969
AA-34681	Dan	No date given
AA-34682	Jacke	No date given
AA-34683	Don	No date given
AA-34684	Discovery	June 17, 1969
AA-34685	#1 below Discovery	June 17, 1969
AA-34686	#2 below Discovery	July 15, 1969
AA-34687	#3 below Discovery	July 15, 1969
AA-34688	FIVE BELOW DISCOVERY	September 1, 1971
AA-34689	SIX BELOW DISCOVERY	September 1, 1971
AA-34690	SEVEN BELOW DISCOVERY	September 1, 1971
AA-34691	EIGHT BELOW DISCOVERY	September 1, 1971
AA-34692	NINE BELOW DISCOVERY	September 1, 1971
AA-34693	Olive	No date given

